

ADOPTED BY THE RIO NUEVO  
MULTIPURPOSE FACILITIES DISTRICT  
BOARD OF DIRECTORS

March 9, 2005

RESOLUTION NO. 2005-02

RESOLUTION AUTHORIZING THE CHAIR TO EXECUTE ON BEHALF OF THE RIO NUEVO DISTRICT AN AMENDMENT TO THE DECEMBER 9, 2002 INTERGOVERNMENTAL, DEVELOPMENT AND LEASE AGREEMENT FOR RESTORATION, OPERATION AND MANAGEMENT OF THE HISTORIC FOX THEATRE.

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE RIO NUEVO MULTIPURPOSE FACILITIES DISTRICT, AS FOLLOWS:

SECTION 1. The Chair is authorized and directed to prepare and execute an amendment to the Intergovernmental, Development and Lease Agreement for Restoration, Operation and Management of the Historic Fox Theatre as deemed necessary and agreed to by the City Attorney and by the District's legal counsel, in substantially the form of the draft amendment attached hereto as Exhibit A.

SECTION 2. The various District officers and City of Tucson employees are authorized and directed to perform all acts necessary or desirable to give effect to this resolution.

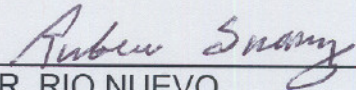
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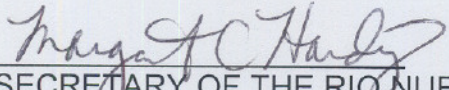
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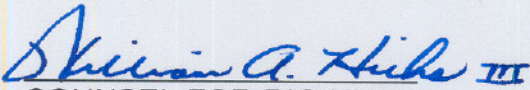
PASSED, ADOPTED AND APPROVED this 9th day of March, 2005.

  
\_\_\_\_\_  
CHAIR, RIO NUEVO  
MULTIPURPOSE FACILITIES  
DISTRICT BOARD

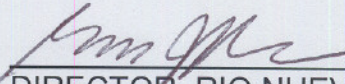
ATTEST:

  
\_\_\_\_\_  
SECRETARY OF THE RIO NUEVO  
MULTIPURPOSE FACILITIES  
DISTRICT BOARD

APPROVED AS TO FORM:

  
\_\_\_\_\_  
COUNSEL FOR RIO NUEVO  
MULTIPURPOSE FACILITIES  
DISTRICT BOARD

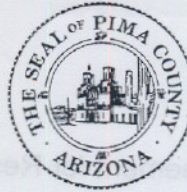
REVIEWED BY:

  
\_\_\_\_\_  
DIRECTOR, RIO NUEVO  
MULTIPURPOSE FACILITIES  
DISTRICT BOARD



F. ANN RODRIGUEZ, RECORDER  
RECORDED BY: J\_V  
DEPUTY RECORDER  
4437 PE2

CCCLK  
TUCSON CITY CLERK  
PICK UP



DOCKET: 12557  
PAGE: 2366  
NO. OF PAGES: 3  
SEQUENCE: 20050980472  
05/20/2005  
RES 14:49  
PICKUP

AMOUNT PAID \$ 7.00

ADOPTED BY THE  
MAYOR AND COUNCIL

March 22, 2005

RESOLUTION NO. 20039

RELATING TO INTERGOVERNMENTAL AGREEMENTS; AUTHORIZING THE MAYOR TO EXECUTE ON BEHALF OF THE CITY OF TUCSON THE AMENDMENT TO THE INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY, THE RIO NUEVO MULTIPURPOSE FACILITIES DISTRICT, AND THE FOX TUCSON THEATRE FOUNDATION ENTITLED INTERGOVERNMENTAL DEVELOPMENT AND LEASE AGREEMENT FOR RESTORATION, OPERATION AND MANAGEMENT OF THE HISTORIC FOX THEATRE; AND DECLARING AN EMERGENCY.

BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF TUCSON, ARIZONA, AS FOLLOWS:

SECTION 1. The Amendment to the Intergovernmental Development and Lease Agreement for Restoration, Operation and Management of the Historic Fox Theatre, attached to this Resolution as Exhibit 1, is approved.

SECTION 2. The Mayor shall execute, and the City Clerk shall attest to, the Amendment to the Intergovernmental Development and Lease Agreement for Restoration, Operation and Management of the Historic Fox Theatre.

SECTION 3. The various City officers and employees shall perform all acts necessary or desirable to give effect to this resolution.

SECTION 4. The City Manager may execute such other documents as may be required to give effect to this Resolution, the Amendment to the Intergovernmental

{A0010109.DOC/2}

RECEIVED  
MAY 24 2005



*Certificate of Clerk*  
• *City of Tucson* •

*State of Arizona*  
*County of Pima*

} ss

I, Kathleen S. Detrick, the duly appointed and qualified City Clerk of the City of Tucson, Arizona, do hereby certify that the foregoing is a true and correct copy of Resolution No. 20039 which was passed and adopted by the Mayor and Council of the City of Tucson, Arizona, at a meeting held on March 22, 2005 at which a quorum was present.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the City of Tucson, Arizona on April 11, 2005.

Total of 2 page(s) certified  
Exhibit not included

Kathleen S Detrick  
City Clerk



F. ANN RODRIGUEZ, RECORDER  
RECORDED BY: J\_V  
DEPUTY RECORDER  
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CCCLK  
TUCSON CITY CLERK  
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DOCKET: 12557  
PAGE: 2369  
NO. OF PAGES: 13  
SEQUENCE: 20050980473  
05/20/2005  
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PICKUP

AMOUNT PAID \$ 11.00

**AMENDMENT TO INTERGOVERNMENTAL, DEVELOPMENT AND LEASE  
AGREEMENT FOR RESTORATION, OPERATION AND MANAGEMENT OF  
THE HISTORIC FOX THEATRE**

THIS AGREEMENT is entered into by and among the City of Tucson ("Tucson"), the Río Nuevo Multipurpose Facilities District ("District"), and the Fox Tucson Theatre Foundation ("Fox"). Tucson, District and Fox are sometimes collectively referred to in this Agreement as the "Parties".

**RECITALS**

A. Tucson is a municipal corporation of the State of Arizona.

B. The District is a multipurpose facilities district established pursuant to Arizona Revised Statutes (A.R.S.) § 48-4201 *et seq.*, to revitalize Río Nuevo, the heart of downtown Tucson, financed in part with tax increment financing in accordance with A.R.S. §§ 42-5031 and 48-4237.

C. Fox is an IRS-recognized 501(c)(3) Arizona non-profit organization governed by a volunteer Board of Directors and a paid professional Executive Director.

D. On December 9, 2002, the City adopted Resolution No. 19449 approving an intergovernmental agreement and on December 4, 2002, the District adopted a resolution approving the same intergovernmental agreement (the "IGA").

E. Pursuant to the IGA, Fox is restoring the historic Fox Theatre located at the northeast corner of Congress Street and Church Avenue in downtown Tucson (the "Historic Fox Theatre") and more particularly described in Paragraph 1 of the IGA.

F. District and Tucson have provided funding and assistance in support of the restoration of the Historic Fox Theatre pursuant to the IGA and desire, after a request by Fox, to provide additional financial and technical assistance to Fox.

G. This Agreement amends the IGA as specifically set out below. All provisions in the IGA not specifically amended shall remain in full force and effect.

H. District has the authority to acquire and dispose of property and interests in property pursuant to A.R.S. § 48-4203.

I. The Parties expressly find and determine that the terms of this Agreement are justified based on the other consideration provided under this Agreement, including, without limitation, the rights and liabilities conferred and imposed on the Parties and the economic development benefits to the community resulting from this Agreement.



not equal One Million Five Hundred Thousand Dollars (\$1,500,000.00), Fox shall pay the District the difference between One Million Five Hundred Thousand Dollars (\$1,500,000.00) and the amount Fox has actually paid the District.

(B) At the end of the fifteen (15) year period, Fox shall pay to the District an amount to be determined by the District based on the outstanding balance of the amount paid to Fox pursuant to Paragraph 4(a)(i) less the amount paid by Fox to the District pursuant to Paragraph 4(a)(i)(A) and plus the interest accumulated on the debt service of the funds provided by the District pursuant to Paragraph 4(a)(i).

(ii) establish an account in an amount not less than Five Hundred Thousand Dollars (\$500,000.00), to be called the "Construction Contingency Account", that can be used by the District to pay for significant construction costs that are not contemplated by the construction contract with Concord. The balance, if any, of such account will be paid to Fox after the Lease Commencement, when a like amount is matched by Fox, to capitalize an Operating Reserve.

(b) Prior to funding the amount provided by Subparagraph (a)(i), Fox shall perform the following:

(i) Deliver to the District an irrevocable assignment of the contracts it has with Concord and Erickson, Leader, and Associates.

(ii) In a form acceptable to the District, assign and subordinate all construction management rights and responsibilities of the Historic Fox Theatre contained in its contracts with Concord and Erickson, Leader, & Associates to the District.

(iii) Hire and retain a development director approved by the District.

(iv) In a form acceptable to the District and Tucson, provide a conditional tax credit equity investor commitment letter to the District in an amount sufficient to complete the renovation of the Theatre, such amount to be determined by the District.

(v) Deliver in a form acceptable to the District a written commitment requiring Fox to transfer ownership of the Star Building to District by special warranty deed, subject to all liens and encumbrances and those title matters set forth in Exhibit 2, upon the earlier of Fox's refinancing of the mortgage financed by Bank One and secured by a deed of trust on the Star Building or eighteen (18) months after the date of Fox's receipt of the funds described in Subparagraph (a)(i). Upon transfer of the Star Building, Fox shall continue to, and the written commitment shall require that Fox, pay all amounts required pursuant to any liens and encumbrances and shall hold the District and City harmless should Fox default on any such liens and encumbrances. Payments on all indebtedness secured by the Star Building and adjoining vacant land shall be considered to be a financial obligation of Fox pursuant to Paragraph 32. Fox may use and occupy this property

—JUN— 2007







"District"  
RIO NUEVO MULTIPURPOSE FACILITIES  
DISTRICT

Ruben D Suarez  
Chairman

ATTEST:

(see notarization)

Clerk

Date

This agreement has been submitted to the undersigned attorney for the Río Nuevo Multipurpose Facilities District, who has determined that this agreement is in proper form and is within the powers and authority granted under the laws of the State of Arizona to the Board.

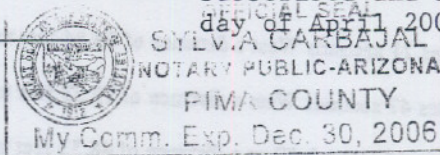
William A. Hills III 4-6-05  
Attorney to District Date

"Fox"  
FOX TUCSON THEATRE FOUNDATION

State of Arizona )  
County of Pima ) ss

Ellie Patterson  
Ellie Patterson, President

STATE OF ARIZONA )  
County of Pima ) ss.



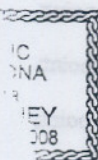
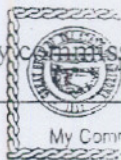
Subscribed and sworn to before me this 1st day of April, 2005 by Ruben Suarez.

Sylvia Carbajal  
NOTARY PUBLIC

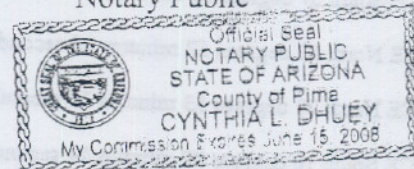
April 1, 2005

SUBSCRIBED AND SWORN TO BEFORE ME this 29 day of March, 2005 by Ellie Patterson, President of the Fox Tucson Theatre Foundation, on behalf of the corporation.

My commission expires:



Cynthia L. Dhuey  
Notary Public



#### EXHIBITS

1. Legal description of the Historic Fox Theatre
2. Legal description of the Star Building and adjoining vacant land.



ing finish floor and extending 50 feet above the existing finish floor described as

County, Arizona, according to the official survey, field notes, and map as made  
 apted by the Mayor and Common Council of said city (then Village) of Tucson,

record in the office of the County Recorder of Pima County, Arizona, in Book 3

corner of said Block 196, being at the Northwest corner of North Stone Avenue

Street, South 83 degrees 08 minutes 39 seconds West a distance of 56.70 feet

est a distance of 83.23 feet to the POINT OF BEGINNING;

est a distance of 18.50 feet to a point;

est a distance of 26.83 feet to a point;

est a distance of 1.28 feet to a point;

at a distance of 46.09 feet to the POINT OF BEGINNING

the following information:

ies over, upon and across all that part of Block 196 of the City of Tucson, Pima  
d notes, and map as made and executed by S. W. Foreman and approved and

ty (then Village) of Tucson, on June 26, 1872, a certified copy of which map is  
County, Arizona, in Book 3 of Maps and Plats at page 70, described as follows:

corner of said Block 196, being at the Northwest corner of North Stone Avenue

Street, South 83 degrees 08 minutes 39 seconds West a distance of 61.09 feet

est a distance of 48.55 feet to the POINT OF BEGINNING;



## EXHIBIT 2

### LEGAL DESCRIPTION

That portion of Lot 9 in Block 196 of City of Tucson, Pima County, Arizona, according to the official survey, field notes, and map as made and executed by S. W. Foreman and approved and adopted by the Mayor and Common Council of said city (then Village) of Tucson, on June 26, 1872, a certified copy of which map is of record in the office of the County Recorder of Pima County, Arizona, in Book 3 of Maps and Plats at Page 70 thereof, described as follows:

BEGINNING at the Southwest corner of Lot 9; thence Northerly along the West boundary thereof a distance of 54.16 feet to the POINT OF BEGINNING;

THENCE Easterly and parallel with the South boundary line of Lot 9 to the West boundary of that portion of Lot 9 conveyed to Lyric Realty Company by Deed recorder in Book 137 of Deeds of Real Estate at page 110;

THENCE Northerly along the Westerly boundary line of said property to the Northwest corner of said property and being on the North line of Lot 9;

THENCE Westerly along the Northerly line of Lot 9 to the Northwest corner thereof;

THENCE Southerly along the Westerly line of Lot 9 to the POINT OF BEGINNING;

#### TOGETHER WITH

All that portion of Lot 9, Block 196 of the CITY OF TUCSON, Pima County, Arizona, according to the official survey, field notes, and map as made and executed by S. W. Foreman and approved and adopted by the Mayor and Common Council of said city (then Village) of Tucson, on June 26, 1872, a certified copy of which map is of record in the office of the County Recorder of Pima County, Arizona, in Book 3 of Maps and Plats at page 70, described as follows:

BEGINNING at the Southwest corner of Lot 9;

THENCE Northerly along the West boundary of said Lot 9, a distance of 29.5 feet;

THENCE Easterly and parallel with the South boundary line of said Lot 9 to a point on the West boundary line of the property described in Deed recorded in Book 137 of Deeds at page 110;



THENCE Southerly and parallel with the East line of Lot 8, a distance of 7 feet;

THENCE Easterly and parallel with the North line of Lot 8, a distance of 7 feet;

THENCE Northerly a distance of 7 feet to the POINT OF BEGINNING.